SGV Builders Sdn Bhd v Kiranjit Randhawa & Co and other applications

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NOS BA-17D-3–02 OF 2021, BA-17D-4–02 OF 2021, BA-17D-5–02 OF 2021 AND BA-17D-6–02 OF 2021
SHAHNAZ SULAIMAN J
17 OCTOBER 2023

Legal Profession — Remuneration — Bill of costs — Defendant claimed for legal fees from plaintiff — Plaintiff filed originating summons for taxation of bill of costs — Whether High Court had power and jurisdiction — Whether issuance of invoices or notices of demand were sufficient to constitute delivery of bill of costs within context of Legal Profession Act 1976 ('the LPA') — Whether there were 'special circumstances' justifying order for taxation of costs to be made

At the Shah Alam Magistrate Court, four writs of summons were initiated by the defendant against the plaintiff. These cases pertained to the defendant's claims for legal professional charges/fees/costs together with interests for the purported legal works done for contentious businesses which were allegedly owed by the plaintiff. The defendant pleaded that the defendant had forwarded the relevant invoices and/or notices of demand to the plaintiff in relation to the outstanding amounts due and still owing. The plaintiff denied these claims from the defendant, claiming, inter alia, that the professional charges/fees/costs imposed by the defendant were mala fide, not truthful and unreasonable and/or contained matters not relating to the tasks instructed by the plaintiff to be carried out by the defendant. Subsequently, the plaintiff filed this originating summons against the defendant with the purpose of having these professional charges/fees/costs as allegedly owed by the plaintiff to be taxed ie taxation of bill of costs to be ordered by the High Court in accordance with the applicable law. The issues for determination were: (a) whether the High Court had the power and jurisdiction; (b) whether the issuance of invoices or notices of demand by the defendant were sufficient to constitute the delivery of bill of costs within the context of the Legal Profession Act 1976 ('the LPA'); and (c) whether there were 'special circumstances' justifying order for taxation of costs to be made in favour of plaintiff pursuant to the LPA and/or the court's inherent supervisory jurisdiction.

Held, dismissing the originating summons:

(1) Pertaining to the jurisdiction of the court, this was a non-issue. There was no question pertaining to the jurisdiction and the power of the court (see para 19).

(2) The document had an invoice number and did not specifically state 'bill of costs'. Nonetheless, the 'invoice' detailed the work conducted by the defendant on behalf of the plaintiff at the magistrate court. The said documents stated the action taken by the defendant in the conduct of the plaintiff's case. The documents amounted to a bill of costs. Whatever the name or title of the documents, the document was in essence, a bill of costs. The bill of costs was served on the plaintiffs. Therefore, the issuance of the invoices or notices of demand by the defendant were sufficient to constitute the delivery of bill of costs within the context of the LPA (see paras 33–36).

(3) The plaintiff had not, after the delivery of bill of costs by the defendant to the plaintiff, filed an application to tax the bill of costs or invoice issued by the defendant. Therefore, it was plainly clear the plaintiffs had not complied with the requirements as provided under s 126(1) of the LPA. With regard to the special circumstances, the plaintiff had not averred what were the special circumstances which would enable the court to allow an extension of time. The plaintiff submitted there was mala fide, untruthfulness, unreasonableness and the defendant had double charged the plaintiff. However, these were not averred in the affidavits filed by the plaintiffs. Hence, this contention could not stand (see paras 40–41 & 44–45).

[Bahasa Malaysia summary

Di Mahkamah Majistret Shah Alam, empat writ saman telah dimulakan oleh defendan terhadap plaintif. Kes-kes ini berkaitan dengan tuntutan defendan untuk caj/yuran/kos profesional undang-undang bersama-sama dengan faedah untuk kerja undang-undang yang dikatakan dilakukan untuk urusan pertikaian yang didakwa terhutang oleh plaintif. Defendan memplid bahawa defendan telah menghantar invois dan/atau notis tuntutan yang berkaitan kepada plaintif berhubung dengan jumlah tertunggak yang perlu dibayar dan masih terhutang. Plaintif menafikan tuntutan ini daripada defendan, dengan mendakwa, antara lain, bahawa caj/yuran/kos profesional yang dikenakan oleh defendan adalah mala fide, tidak benar dan tidak munasabah dan/atau mengandungi perkara yang tidak berkaitan dengan tugas yang diarahkan oleh plaintif untuk dijalankan oleh defendan. Selepas itu, plaintif memfailkan saman pemula ini terhadap defendan dengan tujuan agar caj/yuran/kos profesional ini seperti yang didakwa terhutang oleh plaintif untuk dikenakan cukai iaitu taksiran bil kos yang akan diperintahkan oleh Mahkamah Tinggi mengikut undang-undang yang terpakai. Isu-isu untuk penentuan adalah: (a) sama ada Mahkamah Tinggi mempunyai kuasa dan bidang kuasa; (b) sama ada pengeluaran invois atau notis tuntutan oleh defendan mencukupi untuk membentuk penyampaian bil kos dalam konteks Akta Profesion Undang-Undang 1976 ('APU'); dan (c) sama ada terdapat 'keadaan khas' yang mewajarkan perintah untuk taksiran kos dibuat memihak kepada plaintif

menurut APU dan/atau bidang kuasa penyeliaan sedia ada mahkamah. A

Diputuskan, menolak saman pemula:

(1) Berkenaan dengan bidang kuasa mahkamah, ini bukanlah isu. Tiada persoalan berkaitan bidang kuasa dan kuasa mahkamah (lihat perenggan 19). B

(2) Dokumen itu mempunyai nombor invois dan tidak menyatakan secara khusus 'bil kos'. Namun begitu, 'invois' itu memperincikan kerja yang dijalankan oleh defendan bagi pihak plaintif di mahkamah majistret. Dokumen tersebut menyatakan tindakan yang diambil oleh defendan dalam menjalankan kes plaintif. Dokumen itu merupakan bil kos. Walau apa pun nama atau tajuk dokumen, dokumen itu pada asasnya, bil kos. Bil kos telah disampaikan kepada plaintif. Oleh itu, pengeluaran invois atau notis tuntutan oleh defendan adalah mencukupi untuk membentuk penyampaian bil kos dalam konteks APU (lihat perenggan 33–36). C D

(3) Plaintif tidak, selepas penyampaian bil kos oleh defendan kepada plaintif, memfailkan permohonan untuk mentaksir bil kos atau invois yang dikeluarkan oleh defendan. Oleh itu, jelas sekali plaintif tidak mematuhi keperluan seperti yang diperuntukkan di bawah s 126(1) APU. Berkenaan dengan keadaan khas, plaintif tidak menyatakan apakah keadaan khas yang akan membolehkan mahkamah membenarkan lanjutan masa. Plaintif mengemukakan terdapat mala fide, kepalsuan, tidak munasabah dan defendan telah mencaj plaintif dua kali ganda. Walau bagaimanapun, ini tidak dinyatakan dalam afidavit yang difailkan oleh plaintif. Oleh itu, pendapat ini tidak dapat bertahan (lihat perenggan 40–41 & 44–45).] E F

Cases referred to G

AJ Ariffin, Yeo & Harpal (suing as a firm) v Dr Shaharuddin bin Dato' Haji Aziz [2000] 4 MLJ 610; [2000] 3 CLJ 430, HC (refd)

John Ang & Jega (suing as a firm) v Kulasingam a/l Sinatamby [2001] 2 MLJ 605, HC (refd)

Mindvalley Labs Sdn Bhd v Messrs Rao & Kamal (a legal firm in partnership) [2016] MLJU 1090; [2016] 1 LNS 1303, HC (refd) H

Perusahaan Petanda Bintang Sdn Bhd v Asbir, Hira Singh & Co [1995] 2 MLJ 455; [1995] 3 CLJ 234, HC (refd)

Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc (sued as a firm) [2015] 2 MLJ 1, CA (refd) I

Tanjung Emas Sdn Bhd v Adnan Sundra & Low (mendakwa sebagai sebuah firma) [2001] MLJU 59; [2001] 7 MLRH 357, HC (refd)

Legislation referred to

Legal Profession Act 1976 ss 121, 124(1), 126(1), 132, Parts VIII, IX
Rules of Court 2012 O 59 r 7, Form 117

Teng Weng Loong (with Wong Wai Sam) (Teng Weng Loong & Co) for the plaintiff.
Mohd Ashrul Haikal bin Ashri (Kiranjit Randhawa & Co) for the respondent.

Shahnaz Sulaiman J:

INTRODUCTION

[1] This is an originating summons filed by the plaintiff against the defendant seeking the following orders.

[2] For case number BA-17D-3–02 of 2021:

(a) Satu deklarasi bahawa deposit, fi, caj-caj dan perbelanjaan keluar yang dicaj kepada dan dibayar oleh plaintif kepada defendan berhubung dengan kes Changsi Sdn Bhd dan SGV Builders Sdn Bhd di Mahkamah Majistret adalah terlampau, terlalu tinggi, tidak setimpal dengan hasil kerja Defendan dan melampaui kewajaran jenis dan amaun kerja yang dilakukan;

(b) Satu Perintah bahawa deposit, fi, caj-caj dan pembayaran keluar yang ditanggung oleh/dicaj kepada plaintif kepada, dan/atau oleh defendan, berhubung dengan kerja-kerja dibayar oleh plaintif kepada defendan berhubung dengan kes Changsi Sdn Bhd dan SGV Builders Sdn Bhd di Mahkamah Majistret hendaklah ditaksirkan dan ditetapkan oleh Mahkamah yang mulia ini mengikuti Akta Profession Undang-Undang 1976;

(c) Berikutan itu, satu Perintah bahawa keseluruhan atau sebahagian daripada deposit, fi, caj-caj dan perbelanjaan keluar yang terlebih bayar oleh Plaintif kepada Defendan, hendaklah dibayar balik oleh defendan kepada plaintif, berserta faedah pra-penghakiman, mengikuti Akta Profession Undang-Undang 1976 dan atas syarat sedemikian seperti mana yang dianggap adil dan wajar oleh Mahkamah yang mulia ini, dalam tempoh tujuh (7) hari dari tarikh Penghakiman/Perintah ini;

(d) Faedah pasca-penghakiman pada kadar lima peratus (5%) setahun hendaklah dibayar oleh defendan kepada plaintif ke atas amaun di dalam perenggan (c) di atas, dari tarikh Penghakiman/Perintah ini sehingga tarikh penyelesaian penuh baginya;

(e) Satu lanjutan masa sehingga tarikh pemfailan saman pemula ini untuk mendengar permohonan plaintif untuk permohonan pentaksiran di perenggan (a), (b) dan (c) di atas;

(f) Kos;

(g) Perintah dan relif lain yang dianggap sesuai manfaat oleh Mahkamah yang Mulia ini.

[3] For case number BA-17D-4–02 of 2021:

(a) Satu deklarasi bahawa; dalam keadaan tanpa sebarang perjanjian, deposit, fi, caj-caj dan perbelanjaan keluar yang dicaj kepada dan dibayar oleh Plaintif kepada Defendan berhubung dengan kes Contract Solutions-i Sdn Bhd dan SGV Builders Sdn Bhd di Mahkamah Sesyen adalah tidak bona fide, tidak benar, terlampau, terlalu tinggi, tidak setimpal dengan hasil kerja Defendan dan melampaui kewajaran jenis dan amaun kerja yang dilakukan;

(b) Satu Perintah bahawa deposit, fi, caj-caj dan pembayaran keluar yang ditanggung oleh/dicaj kepada Plaintif-Plaintif kepada, dan/atau oleh Defendan, berhubung dengan kerja-kerja dibayar oleh Plaintif kepada Defendan berhubung dengan kes Contract Solutions-i Sdn Bhd dan SGV Builders Sdn Bhd di Mahkamah Sesyen hendaklah ditaksirkan dan ditetapkan oleh Mahkamah yang mulia ini mengikuti Akta Profession Undang-Undang 1976;

(c) Berikutan itu, satu Perintah bahawa keseluruhan atau sebahagian daripada deposit, fi, caj-caj dan perbelanjaan keluar yang terlebih bayar oleh Plaintif-Plaintif kepada Defendan, hendaklah dibayar balik oleh Defendan kepada Plaintif-Plaintif, berseta faedah pra-penghakiman, mengikuti Akta Profession Undang-Undang 1976 dan atas syarat sedemikian seperti mana yang dianggap adil dan wajar oleh Mahkamah yang mulia ini, dalam tempoh tujuh (7) hari dari tarikh Penghakiman/Perintah ini;

(d) Faedah pasca-penghakiman pada kadar lima peratus (5%) setahun hendaklah dibayar oleh Defendan kepada Plaintif-Plaintif ke atas amaun di dalam perenggan (c) di atas, dari tarikh Penghakiman/Perintah ini sehingga tarikh penyelesaian penuh baginya;

(e) Satu lanjutan masa sehingga tarikh pemfailan saman pemula ini untuk mendengar permohonan Plaintif-Plaintif untuk permohonan pentaksiran di perenggan (a), (b) dan (c) di atas;

(f) Kos;

(g) Perintah dan relif lain yang dianggap sesuai manfaat oleh Mahkamah yang Mulia ini.

[4] For case number BA-17D-5–02 of 2021:

(a) Satu deklarasi bahawa deposit, fi, caj-caj dan perbelanjaan keluar yang dicaj kepada dan dibayar oleh plaintif kepada defendan berhubung dengan prosiding adjudikasi SGV Builders Sdn Bhd dan Dancomech Engineering Sdn Bhd dan prosiding pelaksanaan, penggantungan dan penguatkuasaan di Mahkamah Tinggi Malaya adalah tidak benar, tidak

bona fide, terlampau, terlalu tinggi, tidak setimpal dengan hasil kerja Defendan dan melampaui kewajaran jenis dan amaun kerja yang dilakukan;

(b) Satu Perintah bahawa deposit, fi, caj-caj dan pembayaran keluar yang ditanggung oleh/dicaj kepada Plaintif kepada, dan/atau oleh defendan, berhubung dengan kerja-kerja dibayar oleh plaintif kepada defendan berhubung dengan adjudikasi SGV Builders Sdn Bhd dan Dancomech Engineering Sdn Bhd dan prosiding pelaksanaan, penggantungan dan penguatkuasaan di Mahkamah Tinggi Malaya hendaklah ditaksirkan dan ditetapkan oleh Mahkamah yang mulia ini mengikuti Akta Profession Undang-Undang 1976;

(c) Berikutan itu, satu Perintah bahawa keseluruhan atau sebahagian daripada deposit, fi, caj-caj dan perbelanjaan keluar yang terlebih bayar oleh plaintif-plaintif kepada defendan, hendaklah dibayar balik oleh defendan kepada plaintif-plaintif, berserta faedah pra-penghakiman, mengikuti Akta Profession Undang-undang 1976 dan atas syarat sedemikian seperti mana yang dianggap adil dan wajar oleh Mahkamah yang mulia ini, dalam tempoh tujuh (7) hari dari tarikh Penghakiman/Perintah ini;

(d) Faedah pasca-penghakiman pada kadar lima peratus (5%) setahun hendaklah dibayar oleh defendan kepada plaintif-plaintif ke atas amaun di dalam perenggan (c) di atas, dari tarikh Penghakiman/Perintah ini sehingga tarikh penyelesaian penuh baginya;

(e) Satu lanjutan masa sehingga tarikh pemfailan saman pemula ini untuk mendengar permohonan plaintif-plaintif untuk permohonan pentaksiran di perenggan (a), (b) dan (c) di atas;

(f) Kos;

(g) Perintah dan relif lain yang dianggap sesuai manfaat oleh Mahkamah yang Mulia ini.

[5] For case number BA-17D-6–02 of 2021:

(a) Satu deklarasi bahawa deposit, fi, caj-caj dan perbelanjaan keluar yang dicaj kepada dan dibayar oleh plaintif-plaintif kepada Defendan berhubung dengan guaman timbangtara antara Spatial Design Architect dan Wah Chan Consolidated Sdn Bhd adalah tidak bona fide, tidak sah, terlampau, terlalu tinggi, tidak setimpal dengan hasil kerja defendan dan melampaui kewajaran jenis dan amaun kerja yang dilakukan;

(b) Satu Perintah bahawa deposit, fi, caj-caj dan pembayaran keluar yang ditanggung oleh/dicaj kepada plaintif-plaintif kepada, dan/atau oleh defendan, berhubung dengan kerja-kerja guaman timbangtara antara Spatial Design Architect terhadap Wah Chan Consolidated Sdn Bhd hendaklah ditaksirkan dan ditetapkan oleh Mahkamah yang mulia ini mengikuti Akta Profession Undang-Undang 1976;

(c) Berikutan itu, satu Perintah bahawa keseluruhan atau sebahagian daripada deposit, fi, caj-caj dan perbelanjaan keluar yang terlebih bayar oleh plaintif-plaintif kepada defendan, hendaklah dibayar balik oleh defendan kepada plaintif-plaintif, berserta faedah pra-penghakiman, mengikuti Akta Profession Undang-undang 1976 dan atas syarat sedemikian seperti mana yang dianggap adil dan wajar oleh Mahkamah yang mulia ini, dalam tempoh tujuh (7) hari dari tarikh Penghakiman/Perintah ini;

(d) Faedah pasca-penghakiman pada kadar lima peratus (5%) setahun hendaklah dibayar oleh defendan kepada plaintif-plaintif ke atas amaun di dalam perenggan (c) di atas, dari tarikh Penghakiman/Perintah ini sehingga tarikh penyelesaian penuh baginya;

(e) Satu lanjutan masa sehingga tarikh pemfailan saman pemula ini untuk mendengar permohonan plaintif-plaintif untuk permohonan pentaksiran di perenggan (a), (b) dan (c) di atas.

(f) Kos;

(g) Perintah dan relif lain yang dianggap sesuai manfaat oleh Mahkamah yang Mulia ini.

[6] These four cases were heard together.

PARTIES

[7] For Case Numbers BA-17D-3–02 of 2021, BA-17D-4–02 of 2021 and BA-17D-5–02 of 2021, the parties are:

(a) SGV Builders Sdn Bhd as the plaintiff; and

(b) Kiranjit Randhawa & Co as the defendant.

[8] Whereas, for BA-17D-6–02 of 2021, the parties are:

(a) Goo Huey Kiam and William Chu Pet Chaw as the plaintiffs; and

(b) Kiranjit Randhawa & Co as the defendant.

[9] For ease of reference, the parties in all these originating summonses are hereinafter jointly referred to as 'the plaintiff' and 'the defendant' respectively.

ISSUES BEFORE THIS COURT

[10] The plaintiff put forward the following issues for this court's consideration:

(a) the source of power and jurisdiction of the High Court;

(b) whether the issuance of invoices and notices of demand by the

defendant are sufficient to constitute the delivery of bill of costs within the context of the Legal Profession Act 1976 ('the said Act'); and/or

(c) alternatively, should this court be of the considered view that the defendant's invoices tantamount to a gross bill and/or bill of costs, whether there are 'special circumstances' justifying order for taxation of costs to be made in favour of plaintiff pursuant to the said Act and/or the court's inherent supervisory jurisdiction.

FACTUAL BACKGROUND

[11] At the Shah Alam Magistrate Court, the Writ Summons No BA-A72NCvC-1986–11 of 2020, ('Writ No 1986'), Writ Summons No BA-A72NCvC-2026–11 of 2020 ('Writ No 2026'), Writ Summons No BA-A72NCvC-2027–11 of 2020 ('Writ No 2027') and Writ Summons No BA-A72NCvC-2028–11 of 2020 ('Writ No 2028') were initiated by the defendant against the plaintiff.

[12] In essence, these cases pertained to the defendant's claims for legal professional charges/fees/costs together with interests for the purported legal works done for contentious businesses which were allegedly owed by the plaintiff.

[13] The defendant pleaded that the defendant had forwarded the relevant invoices and/or notices of demand to the plaintiff in relation to the outstanding amounts due and still owing.

[14] The defendant submitted that all four actions against the plaintiff in magistrate court for non-payment of legal fees were filed by the defendant's legal firm in November 2020 and the defendant's invoices (solicitor's bill of costs) were delivered and served to plaintiff. The defendant only initiated those four separate actions against the plaintiff four years after service of the defendant's invoice on the plaintiff.

[15] The plaintiff denied these claims from the defendant, claiming, inter alia, that the professional charges/fees/costs imposed by the defendant are mala fide, not truthful and unreasonable and/or contained matters not relating to the tasks instructed by the plaintiff to be carried out by the defendant.

[16] Subsequently, the plaintiff filed this originating summons with the purpose of having these professional charges/fees/costs as allegedly owed by the plaintiff to be taxed ie, taxation of bill of costs to be ordered by the High Court in accordance with the applicable law.

ANALYSIS AND FINDINGS

The source of power and jurisdiction of the High Court

[17] The plaintiff asserts that the High Court's authority and jurisdiction stem from both Parts VIII and IX of the LPA, along with the common law principle of inherent supervisory jurisdiction concerning matters pertaining to solicitor's costs. In support of this submission the plaintiff cited the case of *Tanjung Emas Sdn Bhd v Adnan Sundra & Low (mendakwa sebagai sebuah firma)* [2001] MLJU 59; [2001] 7 MLRH 357 and *John Ang & Jega (suing as a firm) v Kulasingam a/l Sinatamby* [2001] 2 MLJ 605.

[18] The defendant submitted that pursuant to sub-s 124(1) of the LPA, leave of court is only required when the defendant has initiated an action against the plaintiff within the period of one month from the service of the bill of costs/invoice. The defendant cited the case of *AJ Ariffin, Yeo & Harpal (suing as a firm) v Dr Shaharuddin bin Dato' Haji Aziz* [2000] 4 MLJ 610; [2000] 3 CLJ 430 where His Lordship KC Vohrah stated:

> [1] An Advocate and Solicitor need not obtain the leave of the court before commencing an action for the recovery of costs if such action is commenced on month after a bill of costs has been delivered or posted to the part to be changed. *The leave of the court is required only if the action is commenced before the expiration of the said one month period.* (Emphasis added.)

[19] Pertaining to the jurisdiction of this court, this court agrees with the defendant that this is a non-issue. There is no question pertaining to the jurisdiction and the power of this court. This court will now proceed to consider the next issue.

Whether the issuance of invoices or notices of demand by the defendant are sufficient to constitute the delivery of bill of costs within the context of the LPA

[20] It was submitted by the plaintiff that in the Part VIII of the LPA, encompassing ss 112–121, delineates the guiding principles governing compensation for solicitors. In the context of this issue, the relevant provision, s 121 of the LPA addresses situations where no agreement regarding costs for contentious business has been reached. In such cases, the solicitor is obliged to present a cost bill, which can either comprise itemised particulars or be a lump sum amount.

[21] Sections 122–136 of Part IX of the LPA provides for the recovery and taxation of costs. It covers both contentious and non-contentious business.

[22] The plaintiff argued that the recovery, assessment, and scheme of taxation of contentious and non-contentious business costs is the bill of costs in Form 117 of the Rules of Court 2012 and O 59 r 7 of the Rules of Court 2012. See: *Mindvalley Labs Sdn Bhd v Messrs Rao & Kamal (a legal firm in partnership)* [2016] MLJU 1090; [2016] 1 LNS 1303.

[23] It is the plaintiff's contention that a letter of demand for fees do not amount to bills of costs. The plaintiff cited the case of *Perusahaan Petanda Bintang Sdn Bhd v Asbir, Hira Singh & Co* [1995] 2 MLJ 455; [1995] 3 CLJ 234 in support of this argument.

[24] The plaintiff referred to the textbook *The Law of Costs in Civil Proceedings* (2nd Ed) by Dr Andrew Chew Peng Hui which reads:

> Gross sum or itemised bill
>
> [4.007] Under the Legal Profession Act 1976 a solicitor may render either a gross sum bill or an itemised bill in respect of contentious work done if it is not the subject of an agreement between him and his client. A gross sum bill, as its name suggests, usually gives the amount of the charges without indicating details of works. On the other hand and itemised or detailed bill is drawn up with specific amounts allocated to specific items of work. An itemised bill has been described as 'a detailed account or memorandum of legal services rendered showing the specific items of work done and the specific charges allocated to each of those'. The obligation of client to pay for work done is probably not dependent on the issuance of a bill.

[25] The facts reveal in Case Number BA-17D-3–02 of 2021, that the defendant had on 23 October 2015 and 3 June 2016 issued a Bil No L/1051/2016 to the plaintiff. These bills or invoices can be seen in exh G1 of encl 2.

[26] For case number BA-17D-4–02 of 2021 the facts reveal that the defendant had on 22 January 2016 (exh G7, encl 2) and 18 March 2016 (exh G8, encl 2) issued invoices to the plaintiff.

[27] The facts in Case Number BA-17D-5–02 of 2021 reveal that the defendant had on 12 May 2016 (exh G7, encl 2) had issued an invoice number L/1032/2016 to the plaintiff.

[28] The facts in Case Number BA-17D-6–02 of 2021 disclose that the defendant had on 12 July 2016 issued an invoice number L/1055/2016 to the plaintiff (exh G7, encl 2).

[29] The crux of the issue before this court is whether the bill issued by the defendant to the plaintiff on 23 October 2015, 3 June 2016, 22 January 2016,

18 March 2016,12 May 2016 and 12 July 2016 is a bill of costs as per the LPA and the Rules of Court 2012. The plaintiff contends that it is an invoice and not a bill of costs.

[30] In this regard, the defendant submitted that the bill of costs pursuant to s 132 of the LPA differs from the bill of costs under s 121 of the LPA.

[31] For ease of reference, the relevant provisions are reproduced. Section 132 of the LPA provides:

> 132 Bill of costs to follow Rules of Court
>
> Bills of costs for taxation as between advocate and solicitor and client shall be drawn in the manner provided by *[The Rules of the High Court 1980 [P.U. (A) 50/1980] has been revoked by the Rules of Court 2012 — see Order 94 rules 1 [P.U. (A) 205/2012] which come into force on 1 August 2012] the Rules of the High Court, and the taxation shall be governed by the Rules.

[32] Whereas, s 121 of the LPA states:

> 121 Where remuneration of advocate and solicitor not subject of agreement
>
> (1) Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of an agreement made pursuant to section 116, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum:
>
> Provided that —
>
> (a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him in lieu of the cost a bill containing detailed items, and the gross sum bill shall thereupon be of no effect;
>
> (b) where an action is commenced on a gross sum bill, the Court shall, if so requested by the party chargeable therewith before the expiration of one month from the service on that party of the writ or other originating process, order that the bill shall be taxed;
>
> (c) if a gross sum bill is referred to taxation, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation and the advocate and solicitor shall furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require.
>
> (2) Subsection (1) shall not apply to fees paid to an advocate and solicitor who is briefed as a senior counsel.

[33] This court had perused the bill of costs or invoices issued by the defendant to the plaintiff. The said document has an invoice number and does not have the words bill of costs. It does not specifically state 'bill of costs'.

[34] Nonetheless, the 'invoice' as contended by the plaintiff, details the work conducted by the defendant on behalf of the plaintiff at the magistrate's court. The said document states the action taken by the defendant in the conduct of the plaintiff's case at the magistrate's court.

[35] Having perused the invoice or bill of costs, this court is of the view that the document amounts to a bill of costs. Whatever the name or title of the document, the document is, in the view of this court, in essence, a bill of costs. This court is further satisfied the said bill of costs was served on the plaintiff.

[36] Therefore, this court is satisfied that the issuance of invoices or notices of demand by the defendant are sufficient to constitute the delivery of bill of costs within the context of the LPA.

Alternatively, should this court be of the considered view that the defendant's invoices tantamount to a gross bill and/or bill of costs, whether there are 'special circumstances' justifying order for taxation of costs to be made in favour of plaintiff pursuant to the said Act and/or the court's inherent supervisory jurisdiction

[37] As this court is of the considered view that the defendant's invoice and/or bill of costs amounts to a bill of costs, this court has been asked to consider the special circumstances which would justify and order for taxation.

[38] For purposes of taxation, sub-s 126(1) of the LPA reads:

> 126(1) An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery.

[39] An application for the taxation of a cost bill submitted by an advocate and solicitor can be secured through a petition, as a standard procedure, either by the party responsible for the costs or by any individual obligated to cover the expenses, either to the party in question or to the advocate and solicitor. This request can be made at any point within six months from the date of bill delivery. Alternatively, the advocate and solicitor can make the request themselves after one calendar month has passed, but within a year from the date of delivery.

[40] In this case, the plaintiff had not, after the delivery of the bill of costs by the defendant to the plaintiff, filed an application to tax the bill of costs or invoice issued by the defendant.

[41] Therefore, it is plainly clear the plaintiff had not complied with the requirements as provided for in sub-s 126(1) of the LPA.

[42] The plaintiff has now urged this court to consider special circumstances which would allow this court to extend the period for taxation. See: *Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc (sued as a firm)* [2015] 2 MLJ 1.

[43] It was submitted that the defendant must serve a detailed bill of costs in the form required by the Rules of Court 2012. According to the plaintiff, this was not done, and hence the time limit provided by the LPA is not applicable.

[44] With regard to the special circumstances, the plaintiff has not averred what are the special circumstances which would enable this court to allow an extension of time. The plaintiff submits there is mala fide, untruthfulness and unreasonableness. It was submitted the defendant had double charged the plaintiff.

[45] However, this was not averred in the affidavits filed by the plaintiff. Hence, for this reason, this court is of the considered view this contention cannot stand.

CONCLUSION

[46] For the foresaid reasons, this court dismisses this originating summons. No order as to costs.

Originating summons dismissed.

Reported by Nabilah Syahida Abdullah Salleh